

Before the
Federal Communications Commission
Washington DC 20554

APPEAL

In the Matter of)	
)	
Request for Review of a Decision by USAC)	CC Docket No. 96-45
Schools and Libraries Universal Service)	
Support Mechanism in relation to the Oshkosh)	CC Docket No. 02-6
(WI) Area School District (BEN 33456))	
)	

October 24, 2006

Appellant:

Scott Colantonio
Oshkosh Area School District
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***RE: Appeal for denial of 2005 funding for FRNs 1266817 (WiscNet) and
1266915, 1266968 (SBC Wisconsin).***

To Whom It May Concern:

The core issue: USAC has denied the three above funding requests claiming that there is a competitive bidding violation in which the associated Form 470 contains service provider contact information. The Oshkosh Area School District (OASD) is appealing the three USAC denials. The denials were in a funding commitment letter we received dated March 8, 2006. We appealed to USAC on May 1, 2006. This appeal was denied by USAC in a letter dated August 25, 2006.

Our appeal to the Federal Communications Commission is divided into two parts; (1) Request to fund the two SBC Wisconsin requests, and (2) Request to fund the WiscNet request.

(1) Request to fund the two SBC Wisconsin requests (FRN 1266915, 1266968)

The reason USAC stated for denial of the two SBC Wisconsin requests (FRN 1266915 and 1266968) is that these requests reference the same Form 470 (150550000505926) as the WiscNet request. USAC is not claiming the SBC funding requests had service provider information on the 470. It is only claiming that there was service provider participation in the WiscNet funding request. However, USAC claims that under the FCC's Mastermind decision (May 23, 2000) the 470 is invalid for *any* funding requests on the same 470, even requests where there is no issue concerning service provider participation. We have reviewed closely the Mastermind decision and do not think the Commission intended to deny all funding requests under the circumstances in this particular situation. Paragraph 11 of the Mastermind decision states, "We believe that the participation of the [service provider] contact person in the bidding process may significantly affect the submission of bids by other prospective bidders." However, regardless of the Commission's ruling in the WiscNet appeal below, any claim of WiscNet participation in the competitive bidding process did not in any way compromise bidding for the requested telecommunications services because WiscNet is only an Internet Service Provider (ISP), not an eligible telecommunications provider (ETP). Therefore, WiscNet could not provide the services offered by SBC Wisconsin and thus had no affect on the bidding for these two telecommunication funding requests. Considering this, we request that the Commission clarify its Mastermind decision as follows: When there are multiple funding requests on a Form 470, and it is clear that there is no service provider participation in at least some of those requests, that those request can move forward and be funded. We believe this clarification is straight-forward, and fair to both applicants and service providers. Therefore, we respectfully request the Commission to approve the two SBC Wisconsin funding requests.

The funding for the two SBC Wisconsin telecommunication requests total \$26,845.69. Wisconsin public schools have been under state legislative imposed funding restrictions since 1995. Any funding denied to our district has a detrimental impact on the delivery of technology-related services to our children and teachers.

(2) Request to fund the WiscNet request (FRN 1266817)

USAC's initial denial of this funding request (FRN 1266817) for Internet services was that the corresponding 470 (#150550000505926) contained "service provider information which constitutes a competitive bidding violation." Our appeal correctly noted that there was no service provider information on the 470. In denying our appeal, USAC then noted that Scott Colantonio serves on the WiscNet board. This is correct, but Mr. Colantonio is not a WiscNet employee. He is the director of technology services for the Oshkosh Area School District and under all circumstances he represents the school district, not any provider, in the 470 bidding process.

Paragraph 10 of the Mastermind decision states that an applicant violates bidding requirements when it "surrenders control of the bidding process to a service

provider that participates in that bidding process.” There was no surrendering of the process to a provider. In fact, WiscNet was not even aware that the Oshkosh Area School District filed a form 470 seeking Internet services. In another section of paragraph 10 the Commission is concerned that “other bidders may not receive from the contact person information of the same type and quality that the contact person retains for its own use as a bidder.” Again, Mr. Colantonio was not a bidder. If any other ISP contacted Mr. Colantonio, that ISP would receive the same type and quality of information about the Oshkosh school district as any other provider.

To have any impact on the bidding process a prospective bidder would have to know that Mr. Colantonio served on the WiscNet board because all contact information on the 470 correctly cites the Oshkosh Area School District. The school district received no bids nor even any contacts from WiscNet or any other providers for any of its services for 2005. In paragraph 11 of the Mastermind decision the Commission stated a concern that a prospective bidder may not participate in the bidding process if it believes that another bidder is serving as the contact person. But to make this assumption is to ignore the well known fact that the vast majority of E-rate applicants nationwide never receive any bids for the services posted on their Form 470s.

Now if by chance another Internet Service Provider realized that Mr. Colantonio served on the WiscNet board, the ISP could still submit a bid. The school district would be required to evaluate this bid using cost as the primary factor. If another ISP offered better services at a lower price than WiscNet, then the district would have to accept the other ISP’s bid to retain the district’s E-rate discounts. Since the district received no bids for any of its services in 2005 this decision was never made.

Ignoring the remote possibility that another provider would know that Mr. Colantonio served on the WiscNet board and that this would in some manner taint the district’s decision making process, we find the Commission’s Cochrane-Fountain City School District Order (May 17, 2000) as having a more chilling effect on other prospective bidders. Paragraph 7 of the Commission’s Cochrane-Fountain City Order states

An applicant with an existing contract that was not previously posted is obligated only to post its requests, carefully consider all bona fide bids submitted, and wait the requisite 28-day time period prior to renewing an existing contract for the funding year for which it is requesting discounts.

Under this Order if another provider underbid a district’s multiyear contract, the district would have to break the contract, with possibly heavy penalties. This realization will have more of a deterrence on prospective providers than the Oshkosh district – WiscNet case where the district had no multiyear contract to break.

From a broader perspective, WiscNet is a non-profit, membership-owned cooperative that provides Internet services to K-12 schools, public libraries and

academic institutions in Wisconsin. Many other states and regions have similar organizations. As the Internet and all its varied applications continues to have an ever increasing impact on educating our children, we need to encourage more, not less, K-20 collaboration. Denial of this funding will have a chilling effect on the positive, collaborative relationship WiscNet-type organizations have fostered between the K-12 school community and higher education.

I hope after reviewing our appeal that the Commission will approve both the SBC Wisconsin and WiscNet funding requests. If you have any questions, please do not hesitate to contact me. Thank you.

Sincerely,

Scott Colantonio
Oshkosh Area School District